



OFFICE OF THE SECRETARY OF STATE

NEWS RELEASE

BILL BRADBURY

For Immediate Release:
July 31, 2007

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The Office of the Secretary of State received a certified ballot title from the Attorney General on July 30, 2007, for initiative petition #109, proposing a statutory amendment, for the General Election of November 4, 2008.

In addition, Secretary of State Bill Bradbury determined that the proposed initiative petition was in compliance with the procedural requirements established in the Oregon Constitution for initiative petitions.

The certified ballot title is as follows:

CHANGES PARTISAN PRIMARIES: PRIMARY BALLOTS CONTAIN ALL CANDIDATES; TOP TWO CANDIDATES PROCEED TO GENERAL ELECTION

RESULT OF "YES" VOTE: "Yes" vote changes partisan primaries: primary election ballots contain all prospective candidates; electors may vote for any candidate; top two candidates proceed to general election.

RESULT OF "NO" VOTE: "No" vote retains the current party primary election system, retains procedures for the nomination of minor political party and independent candidates to the general election.

SUMMARY: Currently, major political parties nominate candidates to general election through party primaries; minor political parties, independents nominate candidates to general election. Measure changes partisan primaries for "voter choice offices." Ballots contain all prospective candidates; electors may vote for candidates regardless of elector's, candidate's party affiliation; top two candidates advance to general election. Requires that primary, general election ballots contain candidates' party registration, endorsements. Allows eligible person, regardless of party affiliation, to fill vacancy. Defines "voter choice offices" as offices of: United States Senator; Representative in Congress; Governor; Secretary of State; State Treasurer; Attorney General; State Senator; State Representative; or any state, county, city, or district office that is not nonpartisan or for which political party nominations to general election are authorized by law. Other provisions.

Chief Petitioner(s): Phil Keisling, 3408 SE 8th Ave, Portland, OR 97202.

Copies of the text of this initiative are available at Room 141 State Capitol, for \$1.00. Written requests for copies with your remittance of \$1.00 prepaid, should be addressed to: Elections Division, Room 141 State Capitol, Salem, OR 97310-0722.

There now follows an appeal period of 10 business days. Any elector dissatisfied with the ballot title certified by the Attorney General, who also submitted in a timely manner written comments which addressed the specific legal standards a ballot title must meet, may petition the Supreme Court for a different title. The appeal period ends at 5:00 p.m. on August 13, 2007. The appeal procedures are outlined in ORS 250.085.

The required number of signatures for placement on the 2008 general election ballot is 82,769. These signatures shall be filed in this office not later than July 3, 2008.

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DEPARTMENT OF JUSTICE
APPELLATE DIVISION

July 30, 2007

SECRETARY OF THE STATE

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RECEIVED

John Lindback
Director, Elections Division
Office of the Secretary of State
141 State Capitol
Salem, OR 97310

Re: Proposed Initiative Petition — Changes Partisan Primaries: Primary Ballots Contain All Candidates; Top Two Candidates Proceed To General Election
DOJ File #BT-109-07; Elections Division #109

Dear Mr. Lindback:

We have reviewed the comments submitted in response to the draft ballot title for the above-referenced prospective initiative petition. We provide the enclosed certified ballot title for the proposed measure, which differs from the draft ballot title.

We have received six comments from: (1) William Campbell, (2) Phil Keisling, (3) Linda Williams and Kenneth Lewis, (4) Arthur Towers, (5) Meredith Wood Smith and Trent Lutz, and (6) Eric Winters. This letter summarizes the comments that were received, the reasons why we accepted some of those comments and the reasons why we rejected the remaining comments. ORAP 11.30(7) requires that this letter be included in the record in the event the Oregon Supreme Court reviews this ballot title.

The caption

The caption for the ballot title of a state measure must reasonably identify the subject matter of the measure and contain no more than 15 words. ORS 250.035(2)(a). "A caption complies substantially with the requirements of ORS 250.035(2)(a) if it identifies the subject matter of the proposed measure in terms that will not confuse or mislead potential petition signers and voters." *Mabon v. Myers*, 332 Or 633, 637, 33 P3d 988 (2001).

Commenters Williams, Lewis, Smith, Lutz, Towers, and Winters all disagree with the draft ballot title's use of the "phrase "open primaries." Some suggest that the phrase is inaccurate, and that a more accurate phrase would be "blanket" or "jungle" primaries. Others suggest that the term "open primaries" is a politically loaded term that should not be used in a ballot title. Commenters Keisling and Campbell, on the other hand, agree with our use of the phrase "open primaries" in the ballot title and argue that it is neither inaccurate nor misleading.

We believe that the term “open primary,” as used in the caption – as a comparative or descriptive term that explains how the primary system under the proposed measure would differ from the existing primary system – is neither inaccurate nor politically charged. Although we disagree that the term is inaccurate or politically charged, we have amended the caption in order to better convey the subject matter of the measure. Specifically, instead of referring to “open” primaries, we have changed the caption to specify that the measure “changes” the current partisan primary system. We believe that this change results in a caption that more accurately conveys the subject matter of the proposed measure and that it will convey more information about the proposed measure to the voters. We reject the suggestion of replacing “open” with “blanket” in the caption, because we do not believe that change would provide additional information to the voters.

Commenters Smith, Lutz, and Towers also comment that the use of the word “establishes” before open primaries in the caption inaccurately implies that the current primary system does not allow all registered voters to participate. We believe the above changes we have made to the draft caption adequately address this concern.

Commenters Smith, Lutz, and Towers also argue that the phrase “electors vote regardless of party affiliation” is misleading, because it is not clear whether that phrase is discussing “how electors vote or how candidates appear on the ballot or some combination” and because it is not clear whether electors who are not affiliated with any party would be included. Those commenters also note that the proposed measure abolishes the existing primary system wherein major and minor political parties and independents all can select representative candidates for the general election and replaces that system with a system in which a primary election is held among all of the prospective candidates, and only two candidates may proceed to the general election.

We believe that the above-referenced phrase accurately conveys that all electors within the same precinct/district will receive the same primary election ballot regardless of their party affiliation or lack thereof and that the electors then may choose to vote for candidates regardless of the candidates’ or the electors’ party affiliation. We also believe the existing language is sufficient to encompass those voters who are not affiliated with a particular party. Although we disagree that the phrase is inaccurate or misleading, we have further amended the caption in order to better convey the subject matter of the measure. Specifically, we have deleted that phrase and inserted words that explain that the primary ballot will contain all prospective candidates and that the top two candidates will proceed on to the general election.

Commenter Winters comments that the caption inaccurately implies that the petition applies to all primary elections, when it applies only to primary elections conducted for partisan offices. We have changed the caption to specify that the proposed measure changes only the partisan primary system.

We therefore certify the following caption:

**CHANGES PARTISAN PRIMARIES: PRIMARY BALLOTS
CONTAIN ALL CANDIDATES; TOP TWO CANDIDATES
PROCEED TO GENERAL ELECTION**

The result statements

The “yes” and “no” result statements are to be “simple and understandable statement[s] of not more than 25 words” each that describe the results if the state measure is approved or rejected. ORS 250.035(2)(b), (c).

“Yes” statement

Commenters Williams, Lewis, Smith, Lutz, Towers, and Winters all reiterate the comments that they made to the caption regarding the use of the phrase “open primary” in the “yes” statement. Commenters Keisling and Campbell, reiterate their comments that the use of the phrase “open primary” in the ballot title is neither inaccurate nor misleading. We have amended the “yes” statement to make it consistent with the changes that we made to the caption.

Commenters Smith, Lutz, and Towers also reiterate their argument that the phrase “electors vote regardless of party affiliation” is unclear. Commenter Winters reiterates his suggestion that that same phrase is misleading because it implies that the proposed measure applies to all primary elections, when it only applies to primary elections conducted for partisan offices. We have amended the “yes” statement to make it consistent with the changes that we have made to the caption based on those suggestions. First, as mentioned above, we have replaced the words “establishes open primaries” with “changes partisan primaries.” Second, we have added language that explains that all prospective candidates will appear on the primary election ballot. Finally, we have replaced “allows electors to vote for any candidate at primary regardless of elector’s/candidate’s party affiliation” with “electors may vote for any candidate.”

Commenter Winters also argues that the “yes” statement should include reference to the fact that the constitutionality of the proposed measure “is in serious question.” Specifically, commenter Winters suggests that the “yes” statement should include the words “if measure is held constitutional.” As explained above, a “yes” statement needs to be a simple and understandable statement that describes the result if the state measure is approved. ORS 250.035(2)(b). We do not believe that that statement should include speculation about a proposed measure’s constitutionality. *See Mabon/Pulvers v. Myers*, 333 Or 252, 259, 39 P3d 171 (2002) (“It is not this court’s role to decide among arguable effects of a proposed measure when the meaning of the proposed measure is not clear”).

In addition to the changes mentioned above, we also have amended the “yes” statement to include information specifying that the top two candidates in the primary proceed to the general election.

“No” statement

Commenters Smith, Lutz, and Towers comment that the “no” statement is misleading, because it focuses on major political parties to the exclusion of any discussion of minor parties and independents, when the entire current system for placing candidates on the general election ballot would be replaced by the proposed measure. We agree and have amended the “no” statement to include reference to the existing procedure for nominating minor party and independent candidates to the general election.

Commenter Winters argues that the no statement is misleading because “its confusing language implies that only ‘electors affiliated with major political parties’ can participate in the current system.” We believe that the changes that we have made to the “no” statement based on the immediately preceding comment adequately address this concern.

Commenter Campbell suggests that the description of the current primary election system in the ballot title be shortened, because the existing party primary system is well understood. We agree and have shortened the description to refer to the “current party primary election system.”

We therefore certify the following “yes” and “no” result statements:

RESULT OF “YES” VOTE: “Yes” vote changes partisan primaries: primary election ballots contain all prospective candidates; electors may vote for any candidate; top two candidates proceed to general election.

RESULT OF “NO” VOTE: “No” vote retains the current party primary election system, retains procedures for the nomination of minor political party and independent candidates to the general election.

The summary

The summary is to be a “concise and impartial statement of not more than 125 words summarizing the state measure and its major effect.” ORS 250.035(2)(d). The purpose of a summary is to “help voters understand what will happen if the measure is approved” and “the breadth of its impact.” *Mabon*, 332 Or at 640, quoting *Fred Meyer, Inc. v. Roberts*, 308 Or 169, 175, 777 P2d 406 (1989).

Commenters Williams, Lewis, Smith, Lutz, Towers, and Winters all reiterate the comments that they made to the caption and “yes” statement regarding the use of the phrase “open primary” in the summary. Commenters Keisling and Campbell, reiterate their comments that the use of the phrase “open primary” in the ballot title is neither inaccurate nor misleading. We have amended the summary to make it consistent with the changes that we made to the caption and “yes” statement.

Commenters Williams and Lewis also argue that the ballot title fails to convey that the proposed measure creates an entirely nonpartisan primary for offices which are currently elected

on a partisan basis. We believe that the existing language of the summary, which explains that the measure applies to all “voter choice offices” and defines that term, conveys that effect of the measure. In addition, in amending the summary to make it consistent with the changes made to the caption and “yes” statements, we have added the words “changes partisan primaries.” That change also conveys that the proposed measure changes the partisan primary system for voter choice offices.

Commenters Smith, Lutz, and Towers reiterate their argument that the phrase “electors vote regardless of party affiliation” is unclear and also comment that the summary fails to inform the voters that, under the current system, minor parties and independents can nominate candidates to the general election and under the proposed measure, the top two candidates in the primary are candidates nominated to general election. We have amended the summary to make it consistent with the changes that we have made to the caption and “yes” and “no” statements in response to those comments. Specifically, we have altered the section discussing current law to include reference both to the party primary system and to the process for minor political parties and independents to nominate candidates to the general election; we have replaced the words “establishes open primary elections” with “changes partisan primaries;” and we have added language that explains that all prospective candidates will appear on the primary election ballot.

Commenters Smith, Lutz, Towers, Campbell, and Keisling all note that the summary fails to explain that candidates will be identified on the primary and general election ballots by party affiliation and party endorsement. We agree that the summary should contain reference to the information that will appear on the ballot and have amended the summary accordingly.

Commenter Campbell also suggests that the summary could contain reference to additional attributes of the measure. Specifically, commenter Campbell suggests that the summary include reference to: the measure’s savings and severance clauses, efficiencies gained in precinct committeepersons elections, and more precision regarding the handling of vacancies. We do not believe that the savings and severance clauses or the efficiencies gained in precinct committeepersons elections constitute the “major effects” of the measure, and for that reason, we decline to change the summary to add specific references to those aspects of the proposed measure in the summary. We note that the words “other provisions” at the end of the summary inform the average voter that the measure contains additional provisions that are not specifically mentioned. Finally, we believe the existing explanation of how vacancies are filled is adequate.

Commenter Winters reiterates his comment that the language used in the summary inaccurately implies that the proposed measure applies to all primary elections, when it only applies to primary elections conducted for partisan offices, and that the statement about current law is misleading because “its confusing language implies that only ‘electors affiliated with major political parties’ can participate in the current system.” We have amended the summary to make it consistent with the changes that we made to the caption and the result statements based on those suggestions.

Commenter Winters also reiterates his argument that constitutionality of the proposed measure “is in serious question.” Commenter Winters further notes that, due to the severability

clause contained in the proposed measure, the ultimate effect of the measure if held unconstitutional will be to change all primary elections for offices in Oregon to non-partisan primaries. We do not believe the summary should contain speculation regarding the constitutionality of the proposed measure. For that reason, we decline to change the summary based on that suggestion.

We therefore certify the following summary:

SUMMARY: Currently, major political parties nominate candidates to general election through party primaries; minor political parties, independents nominate candidates to general election. Measure changes partisan primaries for "voter choice offices." Ballots contain all prospective candidates; electors may vote for candidates regardless of elector's, candidate's party affiliation; top two candidates advance to general election. Requires that primary, general election ballots contain candidates' party registration, endorsements. Allows eligible person, regardless of party affiliation, to fill vacancy. Defines "voter choice offices" as offices of: United States Senator; Representative in Congress; Governor; Secretary of State; State Treasurer; Attorney General; State Senator; State Representative; or any state, county, city, or district office that is not nonpartisan or for which political party nominations to general election are authorized by law. Other provisions.

Sincerely ✓

Stacey RJ Guise
Assistant Attorney General

SJG:sjg/APPB0199

Enclosure

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Certified by Attorney General on July 30, 2007.

Assistant Attorney General

BALLOT TITLE

CHANGES PARTISAN PRIMARIES: PRIMARY BALLOTS CONTAIN ALL CANDIDATES; TOP TWO CANDIDATES PROCEED TO GENERAL ELECTION

RESULT OF "YES" VOTE: "Yes" vote changes partisan primaries: primary election ballots contain all prospective candidates; electors may vote for any candidate; top two candidates proceed to general election.

RESULT OF "NO" VOTE: "No" vote retains the current party primary election system, retains procedures for the nomination of minor political party and independent candidates to the general election.

SUMMARY: Currently, major political parties nominate candidates to general election through party primaries; minor political parties, independents nominate candidates to general election. Measure changes partisan primaries for "voter choice offices." Ballots contain all prospective candidates; electors may vote for candidates regardless of elector's, candidate's party affiliation; top two candidates advance to general election. Requires that primary, general election ballots contain candidates' party registration, endorsements. Allows eligible person, regardless of party affiliation, to fill vacancy. Defines "voter choice offices" as offices of: United States Senator; Representative in Congress; Governor; Secretary of State; State Treasurer; Attorney General; State Senator; State Representative; or any state, county, city, or district office that is not nonpartisan or for which political party nominations to general election are authorized by law. Other provisions.

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JUL 30 2007

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